

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

JOSEPH HOWARD STEWART III,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:23-CV-202-Z-BR
	§	
UNKNOWN DEFENDANTS,	§	
	§	
Defendants.	§	

FINDINGS, CONCLUSIONS AND RECOMMENDATION
TO DISMISS COMPLAINT

Plaintiff Joseph Howard Stewart III, acting *pro se* and while a prisoner incarcerated in the Clements Unit of the TDCJ, filed suit pursuant to 42 U.S.C. § 1983. (ECF 3). Plaintiff was granted permission to proceed temporarily *in forma pauperis*. (ECF 5).

On December 14, 2023, the Court issued a Notice of Deficiency, ordering Plaintiff to (1) either submit a properly completed *in forma pauperis* motion and data sheet or pay the \$402 filing fee; (2) amend his Complaint by using the Court-provided form for Section 1983 claims; and (3) provide copies of his grievance forms related to his Complaint. (ECF 5). Plaintiff's deadline to comply with the Order was January 14, 2024. (*Id.*). Plaintiff amended his Complaint, using the proper form as ordered, on January 29, 2024, (ECF 6) but neither paid the filing fee nor submitted an IFP motion. The Court then issued a second Notice of Deficiency, ordering Plaintiff to either file an IFP motion or pay the filing fee by February 29, 2024. Plaintiff has failed to respond.

Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1988); *see* FED. R. CIV. P. 41. "This authority [under

Rule 41(b)] flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)). The undersigned finds Plaintiff's failure to comply with this Court's December 14, 2023, Order or its February 8, 2024, Order warrants dismissal.

RECOMMENDATION

The United States Magistrate Judge hereby recommends that the Complaint filed by Joseph Howard Stewart III (ECF 3) be DISMISSED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Findings, Conclusions and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED March 20, 2024.


LEE ANN RENO
UNITED STATES MAGISTRATE JUDGE

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Findings, Conclusions and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge and accepted by the district court. *See Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1), *as recognized in ACS Recovery Servs., Inc. v. Griffin*, 676 F.3d 512, 521 n.5 (5th Cir. 2012); *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988).